


Simple Planning Rules for Complex Urban Problems: Toward Legal Certainty for Spatial Flexibility

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Abstract

In the course of the nineteenth century, many countries attempted to simplify their regulatory systems; since then, however, the entire legal apparatus has become ever more complex, being based on the (debatable) notion that law must mirror the growing complexity of society. Owing to this presumption, complex land-use and building issues have rapidly generated a host of equally intricate rules. However, some critics have argued that complex systems require exactly the opposite treatment, that is, simple rather than complex legal rules. This article explores the concept of simple rules for urban development, investigating what they are, why they are superior, and how they can be achieved.

Keywords

simple rules, complexity, land-use issues, regulation, planning law

Introduction: Simple Rules for Complex Worlds

In the course of the nineteenth century, many countries attempted to simplify their regulatory systems (Kasper and Streit 1998). Since then, however, the entire system of laws and their application has grown more and more complex in terms of the (debatable) notion (Mumford 1938, 371–74; Tugwell 1939, 11–12; Mannheim 1965) that law must mirror the growing complexity of society. As Suri Ratnapala (1997, 341) observes, “The popular theory is that complexity of the law is the natural consequence of the complexity of society: as society becomes larger and more technologically advanced, the old simple laws become inadequate.” See also Tod Zywicki (1998, 143): “Conventional wisdom holds that as a system becomes more complex, the rules governing that system also must become more complex. Thus, it is argued that as the . . . economy and society becomes more complex, legal rules and regulations must become more complex as well in order to reflect the new realities.” New problems and risks provoke an immediate legal response. This has been referred to as the “responsive state of law” (Nonet and Selznick 1988) and the “risk-rule reflex” (Trappenburg 2011; Buitelaar, Galle, and Salet 2013).

Effectively, in today’s societies the law tends to accumulate into an increasingly complex legal system (Schuck 1992; Epstein 1995; Frisch 2011; Larsson 2013). Increasingly evident for some time now is what is known as *hyperlexis*

(Manning 1997), an apparently unstoppable regulatory accretion (Ruhl and Salzman 2003).

The 2014 U.S. Federal Register comprises 77,687 pages (the Federal Register is the depository of all proposed and final federal rules and regulations). It reports that 87,282 *final rules*—regarding all fields—have been issued since 1993 (Competitive Enterprise Institute 2014, 2015).

In the planning field, too, complex land-use and building issues have rapidly generated a host of equally complex rules, at the national and local levels (Moroni 2010, 2013).¹ For instance, in Italy, the number of local “implementation plans” (i.e., the detailed plans, drawn up on private or public initiative, required to implement the local comprehensive plan) has considerably increased, rising from one (the “Piano Particolareggiato” of law no. 1150 of

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1942) to nine (at present [2016]); moreover, the time required for approval of a (private) implementation plan amounts to thirty-six months in Naples and fifteen in Milan (Oppal 2016). Interestingly, one of the most used manuals of Italian planning law (i.e., Mengoli 2014) has reached 1,190 pages in its most recent edition (note that it deals mainly with national planning law).² To consider another example: when New York published its first zoning resolution in 1916, the document had only fourteen pages, whereas it now amounts to about four thousand pages (City of New York 1916, 2017).

In critical reaction to these trends, it has been argued that “the proper response to more complex societies should be an even greater reliance on simple legal rules” (Epstein 1995, 21). This point is stressed also by Chris Webster and Lawrence Lai (2003, 211): “The more complex the system, the greater the need for simple rules to achieve order.” And as Tod Zywicki (1998, 144) puts it, “Complex systems *demand* simple—not complex—rules.”

The present article embraces this latter view and explores the concept of “simple rules” for urban development. It acknowledges that although simplicity is a *necessary* condition for “good” rules, it is not *sufficient* in itself; and other criteria must be considered as well.³ For the purpose of this article, however, we will focus solely on the simplicity/complexity of rules. First, the article discusses why simple rules are desirable. Second, it explores the features and peculiarities of simple rules. (We consider it important to distinguish between the level of individual rules and that of the rule system as a whole. Some problems of complex rule systems occur because of the nature of individual rules; others, because various rules are aggregated and combined in a certain way. We define the necessary conditions for, or features of, simple rules and simple rule systems.) Third, the article discusses the possibility of moving toward greater rule simplicity.

Before beginning, however, three specifications are necessary. First, we will focus prevalently on “(legal) rules” strictly speaking, rather than on “(legal) principles.”⁴ Second, we will deal only with public rules (e.g., land-use and building rules introduced by local governments), though acknowledging that private rules (e.g., covenants deriving from private agreements) can also be of interest.⁵ Third, we will focus prevalently on local land-use plans and building codes, but our perspective can be helpful also at higher government levels and in fields different from urban planning.

Why Simple Rules: Seven Main Reasons

Before beginning analytical discussion of the features of simple rules, it is important to specify *why* simple rules are desirable. Generally speaking, simple rules are preferable because they

- (1) are more likely to be enforced than complex rules (Sutter 1998, 140–41),
- (2) reduce administrative costs (Schuck 1992, 18ff; Pope 1993, 80–82; Epstein 1995, 30–36),
- (3) are better suited to solving interaction problems among persons with different ideas of the good and lifestyles (Cozzolino 2017),
- (4) increase the capacity of the social-economic system to take advantage of dispersed knowledge (i.e., the diffused contextual know-how that emerges and develops in a dynamic and continuous way) (Hayek, 1982),
- (5) are more stable⁶ (whereas complex rules tend to become obsolete more quickly; they must be rewritten many times in order to keep abreast of changing situations; Zywicki 1998; Buitelaar and Sorel 2010),⁷
- (6) help maintain the separation of powers (conversely, complex rules often defer—and transfer—political decision making from the political arena to that of the court of law; Liebwald 2015), and
- (7) reduce the risk of unscrupulous public officers taking advantage of the elbow room afforded by a fuzzy and ambiguous legal framework (Chiodelli and Moroni 2015).

The second point requires more in-depth discussion. According to Richard Epstein (1995, 30–31), administrative costs comprise all the costs necessary to run a certain legal system correctly. Outlays of this kind include both costs that *public* parties must bear to enforce the legal rules (e.g., the costs of monitoring, inspection, and supervising), and those that *private* parties must bear to comply with these rules (e.g., the costs of understanding which rule applies to their situation, finding out what they must actually do to comply with it, and demonstrating their compliance to the public authorities).

As regards the costs of the public parties, it should be stressed that the U.S. federal government, for instance, spends \$94.5 billion per year on law making, law interpretation, and law enforcement (Ferguson 2013, 97). In the planning field, droves of public officials in many countries spend valuable time fathoming the intricacies of the laws and holding numerous meetings with developers (for data and figures on the increasing number of public officials devoted to planning and building procedures in Italy, for instance, see Oppal 2016).

As regards the costs of the private parties, to be stressed is that complex law not only overtaxes human cognition (Kasper and Streit 1998, 123) but also causes a misallocation of human resources. As Daniel Katz and Michael Bommarito (2014, 371) write, “Unnecessary legal complexity can drive a misallocation of . . . human capital toward comprehending and complying with legal rules and away from other productive ends.” Notably, complex rules impose disproportionate burdens and costs on small businesses in particular.

Furthermore, administrative costs include those caused by errors in operating the legal system.

Simplicity and Complexity: Two Levels

According to Peter Schuck (1992, 3–5) and Richard Epstein (1995, 23–29), *simple* rules are the opposite of *complex* rules. They argue that complex rules have four distinct features: density (detailed, encompassing; they try to cover all aspects of certain actions or activities), technicality (understandable only to experts; ordinary citizens are not able to know directly whether they are in compliance with the rules), differentiation (multilevel government rules at stake, plurality of different overlapping sources of law concerning a given situation), and indeterminacy or uncertainty (hard to apply a rule unambiguously, outcomes are difficult to predict; to be able to decide whether a given action is illegal, it is necessary to deal with several factors, none of which is decisive).⁸

Although these four variables are indeed important for understanding rules, *individual rules* and the aggregate *rule system* must be distinguished more clearly. A rule system emerges when rules are related to each other. In an attempt further to develop the scheme proposed by Schuck (1992) and Epstein (1995), we draw a sharper distinction between simplicity (and complexity) *of rules* and simplicity (and complexity) *of rule systems*. Some features apply to rules; others, to rule systems.

First Level: Features of Simple Rules

We posit that in their most extreme form, simple rules have three cumulative features: (1) they are *accessible*, (2) responses to them can only be *binary*, and (3) they are *general* in nature. Consequently, at the other end of the spectrum, we have complex rules that are indeterminate and uncertain, with a continuum of responses, and specific in nature. These extremes of the spectrum are archetypes, however, because in practice, simplicity and complexity are always relative: one rule is simpler or more complicated than the other (Schuck 1992, 5).

First feature: Accessibility. By *accessible rules*, we mean rules that are understandable and determinate, that is, written in a clear language that does not generate *unnecessary uncertainty* (Macris 2000). If ignorance of the law is no excuse for citizens, it would seem to follow that they should be able to understand it (James and Wallschutzky 1997, 455).

There follows an example of a not-easily-accessible rule (taken from an Italian land-use plan adopted in 2009 by a municipality in the Lombardy region):

In the urban areas of high, medium density residential building, areas of consolidated construction for production activities, to the exclusion of *nuclei* of long-standing formation, into which the Plan is divided in the case of new buildings, the increased coverage of existing buildings or the construction of basements external to the projection of buildings, reserved for unbuilt green space shall be a percentage of the lot amounting to no less than 20%, except as provided by the specific zoning by-laws.⁹

And here is an example of another not easily accessible rule (taken from a city code adopted in 2016 by a U.S. municipality in California):

The approval of a vesting tentative map by the city council shall confer a vested right to apply for permits needed to proceed with development and have the city exercise its discretion to approve, disapprove, or approve such permits with conditions, on the basis of ordinances, policies, and standards in effect at the time the application was determined to be complete pursuant to Section [XXX] of the Government Code.

There follows a third example (taken from an Italian land-use plan adopted in 2011 by a municipality in the Lombardy region):

Should it prove unfeasible to create the private parking spaces and/or car-parks cited in the previous clause, and in exception of indications at the letters 'b', 'c', and 'd' above, in the areas accorded to the buildings in question, owing to lack of spaces, features of the terrain, inaccessibility of public spaces, it may be acceptable to utilise—either wholly or in part—areas outside the zone of the buildings, provided that the use of the land therein does not clash with the regional transport regulations in force, and that the said areas are equipped with adequate access routes, and are located in a suitable position for the said purpose, and contained within a radius of 100 metres, which can be expanded only in case of effective unavailability of areas, up to a maximum radius of 300 metres, and that they are assigned as parking areas for the entire duration of the building which they serve through signed contracts registered with the public authorities at the expense of those holding the deeds.

Note how the numerous interpolated clauses, the changes of subject, and the nebulous phraseology make the prescription difficult to understand.

An example of a more accessible rule is the following (taken from an Italian land-use plan adopted in 2012 by a municipality in the Lombardy region):

The minimum distance between the walls with windows of buildings facing each other shall be equal to the height of the taller building.

Here is another example of a more accessible rule (taken from a land development code adopted in 2015 by a U.S. municipality in Colorado):

The following uses are prohibited in all zoning districts: . . . disposal facilities involving radioactive materials . . . ; sale of fireworks; outdoor shooting range.

Second feature: Binary response. Responses to simple rules are essentially dichotomous in nature: one either complies or does not comply with those rules. In other words, there is a clear-cut, binary yes/no answer, like an on/off switch (Epstein

1995, 25). The answer to a single question (of facts) determines the (legal) outcome (Epstein 1995, 25). The main idea is that if the rule is binary, then there should be no reason for individuals and public officials to meet and “negotiate” compliance. If rules are complex, compliance comes in varying degrees, not in absolute terms. Complex rules are multifaceted; their outcomes are harder to predict.

An example of a simple binary rule is, for instance, the following (taken from an Italian land-use plan adopted in 2010 by a municipality in the Lombardy region):

Pitched roofs may not have a slope greater than 45°.

By comparison, here is an example of a nonbinary rule taken from an Italian local building code (adopted in 2006 by a municipality in the Lombardy region):

The surface area of a private courtyard . . . must not be less than one fifth of the surfaces of the walls delimiting it. . . . In the case of irregularly shaped courtyards, or those with walls of greatly unequal lengths, the local Planning Office will establish which criteria are to be applied for calculating the surface areas of the same.

Note that the concept of “irregular” and “greatly unequal lengths” is vague to say the least; in any event, the criteria to be applied in these cases are left to the discretion of some public official.

And here is another example of a nonbinary rule taken from an Italian local land-use plan (adopted in 2014 by a municipality in the Lombardy region; emphasis added):

The relevant areas of buildings regulated by art. 7.4 must *normally* be kept green and allocated, *when possible*, to recreational activities.

Note how the terms *normally* and *when possible* make it impossible to know in advance what will happen.

Third feature: Generality. When rules become very specific and detailed, we say that they are complicated, not simple. According to Louis Kaplow (2000, 503), for instance, the complexity of legal rules refers to the *number* and *difficulty* of distinctions that the rules make.¹⁰ On this logic, general rules refer to (few) general *types* of situations or actions, not to (many) specific ones (and they apply equally to everyone or, at least, to an indeterminate class of uncountable individuals).

Regarding urban transformations, the generality of rules has two main aspects. First of all, generality is the opposite of multiple “contingent” differentiation. It concerns, for instance, the degree to which rules are markedly and intrinsically locationally specific (i.e., map dependent) or locationally generic (i.e., map independent).¹¹ In this perspective, an example of clearly nongeneric rules are the written and

graphical rules typical of certain *orthodox zoning instruments*, while an example of more general rules are those considered in *urban codes* (Alfasi and Portugali 2007; Moroni 2007; Portugali 2012; Holcombe 2013; Alfasi, 2017). (Here we are clearly talking of rules that apply to privately owned land and buildings).¹²

An example of really complex and specific rules, introducing many distinctions and differentiations, is provided by the zoning rules of the current (2016) land-use plan of Bergamo, an Italian city in the Lombardy region with around 120,000 inhabitants. It has a list of ninety-one “classes of land-use” precisely located on the zoning map (Comune di Bergamo 2016, art. 15).¹³

The example of Oosterwold in the city of Almere (the Netherlands) provides a different, interesting case of something more similar to an urban code, since most rules apply to the entire area (of 43 km²) without introducing complex distinctions.¹⁴ One example (taken from the Oosterwold regulations, 2009) is the following:

All edges of a “plot” are publicly accessible and at least 2 metres wide.

A second aspect concerns “openness,” that is, the extent to which a given rule is permeable to trying out different solutions (Moroni 2011, 2013). In this case, the nongeneral rule usually defines specific solutions in some detail. Here is an example of a nongeneral rule taken from an Italian local building code (adopted in 2014 by a municipality in the Lombardy region):

In order to reduce the consumption of drinking water . . . when the surface area of a building’s gardens or courtyards exceed 200 sq.m. it is obligatory to provide for the collection of rainwater from the said building’s roofs, for the purpose of watering the lawns, flower-beds, and or washing down the courtyards and pathways. To this end, the roofs must be equipped with a system of rainwater collectors and conduits leading to reservoirs that store water for recycling. . . . Hence the size of the cisterns must be large enough to store the year’s rainfall in order to provide sufficient water for irrigation and cleaning (min. volume) or for other envisaged uses (such as supplying water for W.C.s, laundry-rooms, air-conditioning units, etc.). In particular, the overall capacity of the rainwater system . . . must not be less than 35 litres per square metre of residential roof (even partial).

Conversely, a general rule allows individuals (citizens, developers, architects, designers) to respond to new circumstances through innovative action prompted by their particular knowledge of the circumstances of time and place, and their means. For example, a more general rule in the above case might run as follows: “It is prohibited to use drinking water for the purpose of irrigation, or for cleaning courtyards and pathways.” How to act is accordingly left to the free choice of the individuals.

Second Level: Features of Simple Rule Systems

Simple rule systems consist of few elementary rules adopted from a handful of different sources. More precisely, they tend to present three features in particular: (1) simple rules as components, (2) low density, and (3) low differentiation.

First feature: Simple rules as main components. Simple systems consist of simple rules (as defined in the previous subsection). Although it is only a necessary and not sufficient condition, having simple rules as the main components of a set of rules makes also this latter simpler. By contrast, having many complicated rules leads to increasingly complex systems.

Second feature: Low density. We consider a small number of rules or a low rule density to be a necessary condition for simple rule systems. All things being equal, the greater the number of rules, the greater the complexity of the whole. For instance, the more rules there are in a given system, the more probably they will interfere or conflict with each other, making the system even more complicated. As Ruhl and Salzmann (2003, 766–67) observe, paradoxically, even in a system composed of individually simple and clearly formulated rules, “accretion” can radically change the very nature of how the overall system of rules functions. “In a quantum effect, the sheer number or mass of rules may itself create conditions that, despite good faith efforts, hinder full compliance and impede the ability of government to demonstrate its efficient delivery of regulation's purported benefits. Doubling the number of rules may more than double the efforts needed to ensure compliance” (Ruhl and Salzmann 2003, 766–67). Note that if we have two rules, we have only one possible path of interaction among them. Three rules imply three paths, four imply six, and so on in rapid escalation.¹⁵

In many advanced economies, in recent years there has been a wave of new rules and rule changes with regard to flora and fauna, air quality, soil contamination, noise nuisance, external safety, archaeology and heritage, water quality and quantity, and more. Some Dutch lawyers have referred to this as a *law tsunami* (Struiksma 2010) or *legislative ADHD* (attention-deficit/hyperactivity disorder; Teunissen 2010). When the Council of State published (on October 7, 2011) its advice on the government's proposal to make the 2010 Crisis and Recovery Act permanent instead of temporary, it mentioned the instability of the legal system and the large number of rules and legal changes. This new act would greatly change parts of the Dutch spatial planning act from 2008. The Council of State stated that, in the three years since the introduction of the Dutch Spatial Planning Act in 2008, 166 legislative changes had been made that directly affected the working of the act.¹⁶

Third feature: Low differentiation. Rulemaking is today a multilevel and multiagency activity, particularly in the field of

building and land-use planning. “Regulations tend to get layered on one another over time in response to particular demands or crises. . . . New organizations are often created as new regulations are added or new provisions developed. The result can be a patchwork of different agencies haphazardly administering a variety of different regulations” (May 2005, 214). Inevitably, the more government tiers there are, and the more government agencies impose rules, the more complex the system becomes. As a result, it is more likely that there are conflicts between rules and less likely that there is (full) compliance with those rules. (Note that here also the rise in number of agencies increases the amount of interaction between them—and the rules they issue—in rapid escalation).

In Italy, for instance, plans are at present (2016) introduced by the local governments (e.g., local master plans [*Piani regolatori generali*] and various sectoral plans) and by many other public authorities, for instance at the metropolitan-area level (e.g., metropolitan strategic plans [*Piani territoriali metropolitani*]), at the county level (e.g., county coordinating plans [*Piani territoriali di coordinamento provinciale*]), at particular district level (e.g., watershed plans [*Piani di bacino*], plans for parks [*Piani per i parchi*]), and at the regional level (e.g., landscape plans [*Piani paesistici*], regional coordinating plans [*Piani di coordinamento territoriale*]). Recently, many confusions and clashes have been caused by the frequent overlaps between the county plans (law no. 142 of 1990, art. 15, and decree law no. 267 of 2000, art. 20) and the local ones.

In a study on the Europeanization of Dutch spatial planning, David Evers and Joost Tennekes (2016) convincingly demonstrate that the many policies and rules implemented by different European Union (EU) departments sometimes lead to a rule system at the local level that is internally inconsistent. They show, for instance, that the areas in and around the Veluwe, which is at the heart of the Netherlands, are designated as Natura 2000 protection zones while at the same time they receive large amounts of EU subsidies to enhance agricultural production. Also, water quality in the area is below European standards. Moreover, the area has received a European subsidy for the development of an industrial estate while the air quality around the adjacent motorway is worse than EU rules allow. This appears to be the result of agencies designing their own policies and not communicating, let alone integrating, with other policy sectors. In other words, multiagency rulemaking increases the chances of legal tensions. The multilevel element of lawmaking is likely to increase those chances even further.

Two Steps Toward Simplicity: Formal and Substantive

Having simple rules is not a utopian dream but a workable alternative; not least, it is a necessity that applies to the

planning field in particular. To quote Epstein (1995, 23) again, “The common perception is that it is idle at best to long for a return to the imagined simplicity of some past gilded age. Criticisms of legal complexity are often greeted with a shrug by those who view the proliferation of legal rules as an unavoidable necessity.” But our current situation “is neither inevitable nor desirable” (Epstein 1995, 21).

We obviously recognize that in some cases the complexity is due to compromises among different political viewpoints. But, much more often than is believed, it is instead due to technical inadequacy and acritically accepted substantive assumptions. Two steps are therefore crucial to have simple rules and simple rule systems: a *formal* (technical) step and a more *substantive* (strategic) one.

First Step: Formal Devices

Techniques and methods to assess and improve the readability of rules and systems of rules are available: formal guidelines, readability indexes, logical devices, and so on (see, for instance, Allen and Engholm 1980; Swisher 1981; Smith and Richardson 1999; Macris 2000; Kimble 2002; Butt and Castle 2006; Petelin 2010; Greer 2012; Curtotti and McCreath 2013; Garner 2013).

In order to have simpler rules and simpler rule systems in planning, it is first of all important to adopt certain formal devices.¹⁷

First, improve the readability of any single rule. Accessibility and binary response demand, for instance,

- (1) short sentences (i.e., avoid verbosity and redundant adjectives; omit unnecessary details; avoid intrusive phrases and clauses; express only one main point),
- (2) commonly used words (i.e., avoid legal jargon or “legalese”; avoid archaic and foreign terms),
- (3) appropriately used words (e.g., reduce “vagueness” and prevent “ambiguity”¹⁸),
- (4) a minimization of definitions and avoiding tautological clarifications,¹⁹
- (5) orderliness and directness (e.g., preferring the active to the passive voice and the present tense to the future; keep the subject near the verb and the verb near the object),
- (6) easiness (e.g., avoid double negatives; avoid introducing new acronyms and initialisms; avoid contractions; avoid overusing initial capital letters for common nouns; avoid misplaced or misused modifiers;²⁰ avoid the slash, as in *and/or* and similar cases), and
- (7) consistency in language and style (e.g., avoid the use of different words to denote the same thing; use parallel structure for parallel concepts; standardize “deontic operators,” that is, use the same deontic verb—e.g., *must*—for the same deontic instructions).

Second, improve the readability of systems of rules. For instance,

- (1) avoid mixing and mingling descriptive sentences and policy statements with rules *stricto sensu* (if something other than rules is deemed necessary in a normative document, it must be easily identifiable and kept clearly separate from rules),
- (2) organize normative documents according to a logical structure and an appropriate sequence (e.g., general normative information before specific items, ordinary information before extraordinary items),
- (3) make appropriate use of headings,
- (4) put related (normative) materials together,
- (5) minimize cross-referencing (within the document and to other documents/laws), and
- (6) reduce the number of rules within the document.

As well known, there is a long-standing debate on “plain language” (Timm and Oswald, 1985; Kimble, 1994; Sullivan, 2001; Barnes, 2006, 2010; Assy, 2011; Baker, 2011). In order to avoid misunderstandings, six clarifications are fundamental here.

First, assuming that we can create simpler rules does not imply that we accept the idea that *in claris non fit interpretatio*: each and every rule always requires some kind of interpretation. Our idea is that simple rules remove unnecessary complexity and obscurity. As Joseph Kimble (1994, 78) aptly notes, “We are told that litigation will occur with or without legalese because the essence of law is in the legal interpretation of meaning. To say that, though, is to ignore the unnecessary litigation that poor legal drafting produces.”

Second, in certain cases, technical terms and terms of art are necessary, but they can be reduced to a minimum (Kimble and Prokop 1990). They “are more rare and more replaceable than lawyers like to think” (Kimble 2013, 50).

Third, *simple* does not mean *simplistic*. Clear and plain language is not unsophisticated (Kimble, 1994). Moreover, precision is not incompatible with clear and plain language. As Don Byrne (2008, 90) observes, “The most powerful myth is that plain language sacrifices precision. In fact, plain language improves both clarity and precision.”

Fourth, certain formal guidelines are just guidelines, not absolute and inflexible directives (Kimble 1994). Experience is obviously also relevant.

Fifth, we do not assume that certain formal guidelines are valid a priori. Advocates of simple rules do not adopt a narrow, text-based—instead of reader-based—view. Testing guidelines is obviously crucial for continuously improving them (Kimble 1994). Empirical research is fundamental and useful (Smith and Richardson 1999; Martindale, Koch, and Karlinsky 1992; Masson and Waldron 1994; Campbell 1999; Jones et al. 2012).

Sixth, we assume that this first step (i.e., the formal one) is necessary but insufficient without also accepting the second, more strategic step (i.e. the substantive one). In short, the road toward true simplification implies more than linguistic improvements (James and Wallschutzky 1997, 449ff.). Achieving effective simplification of the law requires a parallel simplification of public policy (see below).

Second Step: a Fundamental Reorientation on the Role of Law within Society

It is therefore also important to adopt a more substantive policy orientation, a step that entails accepting the following four ideas.

First, recognize that there is not always a rule solution for each and every problem. We need in particular to manage and control our “risk-rule reflex” (Trappenburg 2011).²¹ If the rule attempts to solve insoluble problems, it ends up being overcomplex. The orthodox land-use plans that claim to achieve a specific end state for the city often end up generating a host of complex regulations (in the vain attempt to freeze-frame a reality that is intrinsically dynamic). Note, moreover, how regulations that attempt to obtain overly specific results, insinuating themselves obtrusively in the socio-economic realities, can likely generate the opposite of their target, namely, *perverse effects*; in other words, they can backfire.²²

Second, recognize that a strictly “instrumental” view of the law—as a means to achieve specific outcomes directly—is inadequate (van Rijswick and Salet, 2012); appropriate rules instead create a framework fundamental in creating the conditions for plural co-possible individual actions. They are not *shaping devices*; rather, they are mainly *filter devices* (Moroni, 2015). All this obtains without any specific spatial arrangement in mind but merely in order to provide the means with which to fulfill the varied and incommensurable separate purposes of the many different inhabitants of the city (Moroni 2011, 2015). The aim of the law cannot be to guarantee particular substantive outcomes. “If we want to create new opportunities open to all, to offer chances of which people can make what use they like, the precise results cannot be foreseen” (Hayek 1944, 79).

Third, prefer general and abstract rules to more specific and detailed ones, recognizing that rules must guarantee that the actions of individuals are coordinated only as regards their “typical features” (i.e., their repeatable, time-independent, and situation-independent aspects), not as regards their “specific features” (i.e., their unrepeatable, time-dependent, and situation-dependent aspects) (Moroni, 2011); in short, we can grant a *pattern coordination*, not a *coordination of details* (O’Driscoll and Rizzo, 1985). Note that complex rules that dictate specific actions in light of an idea of coordination of details basically reduce the capacity of individuals to apply their particular knowledge about their circumstances of time and place. Consequently, they

reduce the capacity of the system to take advantage of the collective’s diffuse knowledge (Hayek 1982).

Fourth, recognize that dynamic and plural social-spatial systems do not require a flexible system of land-use rules so that it is possible constantly to adapt to the ongoing social-economic dynamic but, rather, require a *stable* set of abstract and general rules that enable society itself to be effectively flexible (Moroni 2007, 2015).

These ideas can be accepted as the cultural background for planners and public officials in everyday practices, but they also suggest certain institutional reforms, for instance, higher-order institutional constraints on the generation of plans, and the reduction to a minimum of the number of agencies and public authorities that can introduce rules regarding land use and building transformation.²³

In short, as J. B. Ruhl and Harold Ruhl (1997, 471) have duly noted, the philosophy of our approach to lawmaking “must be transformed so that the objective of controlling legal complexity is a foremost concern.” For them, a new philosophy of lawmaking is required, “in which the mass of law is increased not as the presumptive response to all social problems, but only when it is determined to be absolutely necessary” (Ruhl and Ruhl 1997, 474). The lawmaking apparatus “must recognize that it can be the source of social problems, and that it could solve some social problems by reducing sociolegal complexity” (Ruhl and Ruhl 1997, 475). Lawmakers “must alter their focus from reductionist, problem-specific approaches to system-level approaches” (Ruhl and Ruhl 1997, 475). Moreover, we have to recognize that “law is not the only problem-solving tool society has at its disposal. When law steps in, it risks displacing other forms of resolution that society has devised over long periods of trial and error, without any guarantee doing a better job” (Ruhl and Ruhl 1997, 475).

As we have seen, the literature offers some pointers in terms of the formal devices to introduce. As regards substantive policies and strategies that can contribute to law simplification, the discussion is still lacking and too often confused with ideological perspectives. In this regard, it is important to note that *simplicity* and *stringency* (restrictiveness) are not mutually exclusive. Highly stringent rules can ultimately be notably simple. In short, a simple rule is not necessarily non-stringent or aimed at a “free” market. Instead, such rules can actually be very restrictive. For instance, rules that are both simple yet restrictive might include prohibiting the presence of a hazardous substance or a particular land use applied to an entire city because of its negative externalities. Hence, when someone pledges to implement simple rules, he or she is not (necessarily) arguing for a *laissez-faire* approach. In other words, being in favor of simple rules does not imply being opposed to state oversight and intervention (Epstein 1998, 153). It is of interest to note here that although there is no doubt that simple rules cannot ensure highly composite distributive outcomes (Hayek 1944, 75–104; Hayek 1960, 85–102, 220–33), there is nothing to prevent even very simple

rules from effectively preventing various negative externalities from developing.

Achieving the desired simplicity is clearly no easy task (we recognize the difficulties involved—underscored by critical discussion of this issue, for example, by Penman 1992; Wright 2000; Barnes 2010; Assy 2011; Sohoni 2012), but neither is it a totally impossible venture. As indicated above, while the conditions underlying this idea of simplicity admit different “degrees” of compliance, this does not mean that we should not strive to achieve it as best we can.

Final Remarks: The Role of Rules

The central problems of any legal system are fundamentally two: (1) to maintain social harmony, that is, peaceful coexistence without reciprocal harms (particularly when people live and work in circumscribed spaces like cities), and (2) to allow people to interact and join each other in common ventures for mutual gain (Epstein 1995, 327).

Those who claim that rules must become more complex apace with the complexity of society and the economy have therefore lost sight of the essential function of rules. They exist to coordinate the actions and interactions of innumerable distinct individuals and not as a means to obtain optimal outcomes (Zywicki 1998, 146). In short, simple rules are advocated by people who acknowledge both the growing complexity of the world in which we live and our basic ignorance of its structural intricacies (Moroni 2012b). On the contrary, those who want complex rules have “an unattainable vision of perfection” (Epstein 1995, 39); “knowing when to quit” is one of the crucial driving forces behind a system of simple rules (Epstein 1995, 53). The role of the legislator cannot be that of writing an instruction manual for the economy and society that covers every eventuality (Ferguson 2013). Consequently, we have to avoid “the mania for elaborate regulation” (Ferguson 2013, 97).

We should note that the “multirationality” inherent in today’s societies does not necessarily entail an institutional framework that is multirational in itself;²⁴ rather, it demands an institutional framework that is intrinsically *open* to plural kinds of rationality—and therefore simple, stable, and most importantly, impartial. The logical consequence of this is that the institutional framework does not have a specific objective but has a form of “meta-end,” namely, to favor the harmonious coexistence of a plurality of individuals who bring into the equation a lively gamut of varied preferences and rationalities (Moroni 2011).

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Notes

1. As Ben-Joseph (2005, 2) writes,

Through the years, the design and layout of urban developments have become increasingly regulated. Professional and governmental bodies have developed standards for the built environment that dictate all aspects of the form and shape of urban . . . communities. Obviously, development standards can assure a level of quality in performance as do those plans and construction standards designed to protect our health and safety. The problem arises when standards intended for health and safety overstep their bound and lose grounding in the objective measures of their benefit or break the connection with the original rationale for their existence. This disconnection has overtaken many standards and regulations today.

2. On the increased, complex regulation in the planning field in Italy, for instance, see Bonetti (2016).
3. See Epstein (1995, 29): “The proposition that simple rules are best for a complex world does not imply that any simple rule could do the job.”
4. *Rules* (e.g., “You must do X ”) are directly prescriptive, while *principles* (e.g., “No one should gain private profit from his or her public role”) mainly provide reasons that point in a certain direction but without determining a given outcome (Dworkin 1967, 1977). The fact that principles are intrinsically more generic requires a partially different discussion. We would like to stress only two points here. First, we do not believe (as argued by Braithwaite, 2002) that a prevalently principle-based legislation and regulation is the correct response to contemporary complexity (James, 2010). Second, even in the case of principles, there must be a limit in terms of inaccessibility/indeterminacy. There follows an example of an excessively generic and inaccessible principle taken from an Italian land-use plan (adopted in 2008 by a municipality in the Lombardy region):

The reference framework of the development of the future Detail Plan forms an integral part of the overall context aimed at the urban and environmental reorganisation of the territory as a whole. One key aspect of the proposed intervention is the aim to re-interpret in a contemporary key the thematic basis of the setup of a specific portion of the city, inserted in a context that is impacted by natural environmental and/or anthropic and cultural outcomes, according to the morphological and compositional principles linked to interventions characterised by settlement principles that generate amenities with an urban structure devised in advance and according to transformative principles that affect modest portions of the territory, defined according to an ordered scheme from the outset of study of the area involved in the said transformation. In particular, the urban form can be orchestrated on the basis of morphotypological principles that regulate functions and end-uses according to a structured design and hierarchy of the spaces

constructed, the open spaces, and interconnecting fabric, with the aim of defining the architectural precipitate, and hence the building instrument itself. A vital and determining aspect for the proposed intervention is the underlying intent.

The holistic nature of the phrases combined with the lack of precision (“transformative principles,” “interconnecting fabric,” “the underlying intent as determining aspect,” etc.) heightens the nondeterminacy of the principle.

5. Especially in the case of (residential) self-organization, private law is omnipresent (Andersson and Moroni 2014, 49–50). For problems in this case, see, for instance, Hyatt (1975, 1978).
6. Stability is a fundamental feature of rules, as Brennan and Buchanan (2008, 13) aptly underscore: “If rules are viewed as providing information to enable the players to predict each other’s actions, it follows that any change in the rules destroys information. . . . In order to function, rules require stability. If rules are continually subject to change, the information they provide becomes negligible.”
7. The quite complex 1995 local land-use plan of Torino (Italy) has to date (2016) been subject to two hundred variances.
8. For other attempts to define “complex rules,” see Kades (1997) and Katz and Bommarito (2014).
9. In this, as in the following cases, only a general reference to the date of adoption, country and administrative level of the planning instrument is provided. The quotations from planning instruments are in fact relevant here only as examples of single normative sentences.
10. Even if in a (substantive) perspective different from our view, this point is clearly recognized (analytically) by Weisbach (1999, 867): “The more complex the law, the more accurately it distinguishes between different individuals or transactions. . . . We can think of this type of complexity as the number of lines or the degree to which the lines match the underlying terrain in a topological map.”
11. For the terms *locationally specific rules* and *locationally generic rules*, see Needham (2006, 20). For the terms *map-dependent rules* and *non-map-dependent rules*, see Alfasi, Almagor, and Benenson (2012, 875–76).
12. To some extent the question is different for public land (i.e., for public intervention on public soil), but this argument does not concern us here. For the distinction between the two fields, see Moroni (2015).
13. Another example of interest here might be the increase in the number of “special zoning districts” in New York. Since 1969, the New York City Planning Commission has designated special zoning districts to “achieve specific planning and urban design objectives in defined areas with unique characteristics” through additional regulations that modify the underlying district regulations (<http://www1.nyc.gov/site/planning/zoning/districts-tools/special-purpose-districts.page>). Today (2016), New York City has seventy-nine special zoning districts.
14. The so-called organic development process that recently started in the Netherlands as an alternative to the traditional comprehensive integrated development approach is, in our opinion, an interesting attempt in this direction (Buitelaar, Galle, and Salet 2012; Buitelaar, Galle, and Sorel 2014). The Oosterwold development in the town of Almere (Municipality of Almere, 2009) is certainly the best-known example of this new trend; it is not necessarily a “best practice,” but it is nevertheless an interesting experiment (Cozzolino et al. 2017).
15. Things become even more complicated if we take account not only of rules but also of meta-rules. But this simple observation is enough to convey a clear picture of the problem at issue.
16. On this, see <https://www.raadvanstate.nl/adviezen/zoeken-in-adviezen/tekst-advies.html?id=10071>.
17. For reasons of space, we will consider here only rules formulated in *words*, but a similar discourse applies to *graphical* rules (on which see, for instance, Moroni and Lorini, 2016).
18. *Vagueness* (i.e., a situation in which it is uncertain how many things are referred to by a certain word) can only be reduced, not totally eliminated (we can circumscribe words like *building* or *vehicle*, but they will always present some uncertainty at the margins; Tiersma 2006, 41). *Ambiguity* (i.e., a situation when something can have more than one meaning), on the contrary, presents an either-or choice, a choice among alternative meanings: “Ambiguity is almost always unintended and almost always a sin, but it’s always preventable” (Kimble 1995, 79). For the distinction between vagueness and ambiguity, see Ziemiński (1976). For the recent debate on vagueness in law, see Sorensen (2001), Jónsson (2009), Liebwald (2013), and Hunt (2016).
19. Here is an example from a 2001 U.K. local building code (emphasis added): “*Business* entity means any *business* form that may be organized to operate a *business* including, but not limited to, corporation, partnership, limited partnership, association, or sole proprietorship. Business entity shall also mean an individual operating a *business*.” And here is an example from a 2005 U.S. zoning ordinance (emphasis added): “*Developer*: A person engaging in *development*.”
20. As Kimble (2002, 45) recommends, “Connect modifying words to what they modify. Be especially careful with a series: make clear whether the modifier applies to one or more than one item.” An example of unclear use is “educational institutions or corporations.”
21. This is not easy, however, and requires reflection for which there is often little opportunity. At a time of “mediatized politics” (Hajer 2009), the state is expected to take firm action in the face of crisis and risk. Lawmaking is relatively easy and cheap to be vigorous, or to give the impression of being so.
22. In short, inadequate rules can produce unintended consequences; sometimes these consequences do not merely go in a different direction but go in the opposite direction to the one originally intended. The rule causing these side effects is therefore counterproductive (Moroni 2012a). One example is public control over rental agreements and rental canons, which have been sometimes introduced, through complex regulative forms, to favor tenants lacking the requisite financial means (for instance, in Italy during the 1970s). Such regulations have made house rentals less flexible and profitable, thereby reducing the stock of rented houses. The result is that they have critically worsened the situation for people seeking somewhere to live.
23. See Ratnapala (1997, 349–50). “While continuing to test the efficiency of specific legal rules, we should also investigate the structural reasons which make our higher-order institutions . . . produce inefficient laws” (Ratnapala 1997, 350). The central question is, therefore, “How can the political system be restrained from generating legal complexity?” (Ratnapala 1997, 350).
24. On the question of “polyrationality,” see in particular Davy (2014).

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